Supreme Court, U.S.
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No. 99-470

IN THE

Supreme Court of the United States

LINDA DARLENE LANGFORD,

Petitioner,

v.

MAKITA U.S.A., INC., and MAKITA CORPORATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioner, Linda Darlene Langford, was injured at her place of employment, Belmont Homes, Inc., while using a miter saw model LS1020 manufactured by Respondents ("Makita"). Langford was injured because the safety guard covering the blade of the saw was intentionally broken off or forcibly removed by someone at Belmont Homes. It is undisputed that Langford would not have been injured had this safety guard been in place. It is also undisputed that Langford knew that the guard had been removed and that it was unsafe to use the saw in this altered condition.

In this products liability action governed by Mississippi law, Langford seeks to recover for her injuries against Makita under various causes of action, including strict liability, negligent design and failure to warn. In granting Makita's Motion for Summary Judgment, the District Court and Court of Appeals correctly applied Mississippi law and properly found that, based on the undisputed facts, all of Langford's claims were barred because the miter saw was substantially altered after it left Makita and, alternatively, because Langford assumed the risk of using the miter saw without a safety guard in the course of her employment with Belmont Homes. Accordingly, the only questions presented by the Petition are:

1. Whether the Court of Appeals erred in affirming the District Court's ruling that the miter saw was substantially altered after it left Makita and that under Mississippi law this barred Langford's claims?

2. Whether the Court of Appeals erred in affirming the District Court's ruling that Langford assumed the risk of using the miter saw without a safety guard and that under Mississippi law this barred her claims?

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

The parties to the proceeding below were Petitioner, Linda Darlene Langford, and Respondents, Makita Corporation of America, Makita U.S.A., Inc. and Makita Corporation. By agreement of the parties and Order dated July 22, 1997, Makita Corporation of America was dismissed from this action, without prejudice.

Pursuant to Rule 29.6 of this Court, Makita U.S.A. is a wholly owned subsidiary of Makita Corporation, a corporation organized under the laws of Japan (hereinafter collectively "Makita"). Makita Corporation has no parent corporation and no publicly held company owns 10% or more of its stock.

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No. 99-470

In the
SUPREME COURT OF THE UNITED STATES

LINDA DARLENE LANGFORD,

Petitioner,

v.

MAKITA U.S.A., INC., and MAKITA CORPORATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

Respondents, Makita U.S.A., Inc., and Makita Corporation, hereby file and serve this Brief in Opposition to the Petition for Writ of Certiorari filed by Petitioner, Linda Darlene Langford, as follows:

OPINIONS BELOW

By Memorandum Opinion and Final Judgment entered September 2, 1998, the District Court granted summary judgment in favor of Makita. Langford filed a Motion to Reconsider, which the District Court denied on November 5, 1998. Langford appealed the grant of summary judgment and the corresponding denial of her request for reconsideration to the United States Court of Appeals for

the Fifth Circuit. By way of an unreported, per curium opinion dated May 13, 1999, the Court of Appeals affirmed. That opinion was not included in the Appendix to the Petition and is therefore set forth as an Appendix to this Brief in Opposition. Langford filed a petition for rehearing which the Court of Appeals denied on June 16, 1999.

COUNTER-STATEMENT OF THE CASE

On February 10, 1995, Langford was injured at her place of employment, Belmont Homes, while using a miter saw model LS1020 manufactured by Makita in 1990. The miter saw left Makita equipped with a sturdy, clear, plastic safety guard which was designed to prevent the user from coming into contact with the spinning blade. Warnings set forth on the saw itself and in the accompanying instruction manual instructed the user not to operate the miter saw unless the safety guard was in place and operating smoothly. The safety guard of the miter saw was missing at the time Langford was injured.

It is undisputed that the miter saw left Makita's custody and control equipped with an operable safety guard. The only proof in the record is that the safety guard was subsequently intentionally broken off or forcibly removed by someone at Belmont Homes. The miter saw which injured Langford was being used at Belmont Homes without a safety guard in violation of the manufacturer's warnings. It is undisputed that the safety guard if not removed would have prevented Langford's injuries.

Langford knew that the miter saw was supposed to have a safety guard covering the blade. She also knew that Belmont Homes had removed the safety guard from this saw

and other saws in the plant. Langford knew it was unsafe to operate a miter saw without the safety guard in place because she appreciated the danger of coming into contact with a spinning saw blade. Langford even complained about the missing safety guards to her supervisor at the plant. Yet, in spite of her appreciation of this danger, Langford continued to use the miter saw in its altered condition without the safety guard because she allegedly feared her employment with Belmont Homes would be terminated if she refused.

REASONS FOR DENYING THE WRIT

In her Petition, Langford re-urges the same arguments which she made twice before the District Court and twice before the Court of Appeals. The Petition should be denied because the decisions of the District Court and the Court of Appeals are correct, and in any event, these decisions turn solely on a straightforward application of Mississippi law to the particular facts of this case. The Petition simply does not present any important question for resolution by this Court; nor does it present any occasion for this Court to exercise its supervisory power.

I. THE DECISIONS BELOW WERE CORRECT

This case turns on two undisputed, material facts: (1) the miter saw which injured Langford was substantially altered after it left Makita's control in that someone at Belmont Homes intentionally removed a safety guard which, if in place, would have prevented Langford's injuries; and (2) Langford knew that the safety guard was missing and that the miter saw was dangerous in this altered condition, and yet she continued to use the saw in the course of her employment with Belmont Homes. Mississippi law is clear

that there can be no recovery against a manufacturer where the product is not defective when it leaves the manufacturer's possession and a subsequent, substantial alteration of the product is isolated as the intervening, sole proximate cause of the plaintiff's injury. Further, under Mississippi law, assumption of the risk is a complete defense in products liability actions. Because there is no genuine issue of material fact as to whether the miter saw was substantially altered or whether Langford assumed the risk of using the saw in this altered condition, the District Court and Court of Appeals correctly ruled that Makita was entitled to judgment as a matter of law.[1] Langford's suggestion that the lower courts failed to follow Mississippi law is simply wrong. The decisions below were correct and fully in accordance with Mississippi law.

A. The District Court and Court of Appeals Correctly Ruled that the Miter Saw Was Substantially Altered after it Left Makita and that under Mississippi Law this Barred Langford's Claims

Langford's claims against Makita in this action are governed by Mississippi's Products Liability Act, Miss. Code Ann. § 11-1-63. This Section applies "in any action for damages caused by a product" and provides causes of action for strict liability, negligent design and failure to warn. Miss. Code Ann. § 11-1-63(a)(i). Under § 11-1-63, the manufacturer of a product has no liability unless the plaintiff proves that the product was defective at the time it left the manufacturer's control, that the defect rendered the product unreasonably dangerous and that the defect proximately caused the plaintiff's injuries. Miss. Code Ann. § 11-1-63(a)(i)-(iii).

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1. The substantial alteration defense and the assumption of the risk defense provided alternative grounds for the lower courts to rule in favor of Makita.

By requiring the plaintiff to prove that her injuries were proximately caused by a defective condition that existed when the product left the manufacturer's control, section 11-1-63 embodies the firmly established common law defense of substantial alteration.[2] Prior to the enactment of § 11-1-63 in 1993, the Mississippi Supreme Court had long recognized that, in order to recover in a products liability action, the plaintiff must prove that the product was in substantially the same condition at the time of her injury as it was when it left the manufacturer's custody and control. *State Stove Mfg. Co. v. Hodges*, 189 So. 2d 113, 118-19 (Miss. 1966); *Sperry-New Holland v. Prestage*, 617 So. 2d 248, 262 (Miss. 1993). There can be no recovery where the product is substantially altered after it leaves the hands of the manufacturer, and the alteration is isolated as the sole proximate cause of the plaintiff's injury. *Creel v. General Motors*, 233 So. 2d 105, 109 (Miss. 1970); *Ford v. Matthews*, 291 So. 2d 169, 174 (Miss. 1974). As succinctly stated by the Mississippi Supreme Court:

> [F]rom the evidence it must appear that the defect which was the proximate cause of the harm existed when the product left the possession of the manufacturer. In this State, as in most states, the burden of proving that when the accident occurred there had been no substantial change in the condition in which the product left the manufacturer is upon the plaintiff.

B.F. Goodrich v. Taylor, 509 So. 2d 895, 903 (Miss. 1987).

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2. *See* Miss. Code Ann. § 11-1-63(h) ("[n]othing in this section shall be construed to eliminate any common law defense to an action for damages caused by a product").

In granting Makita's Motion for Summary Judgment, the District Court correctly found that the following material facts were undisputed:

> There is no question that the saw left the control of [Makita] with a clear plastic guard in place, with warnings in the instruction manual and on a label on the saw itself not to operate the saw without the guard in place, ... The warning label remained on the saw involved in [Langford's] accident. . . . Both [Langford's] and [Makita's] experts agree that the accident would not have occurred if the guard had been in place as manufactured.

App. at 4a. The District Court and Court of Appeals correctly applied Mississippi law to these undisputed facts and ruled that Makita was entitled to judgment as a matter of law as to all of Langford's claims because the miter saw was substantially altered after it left Makita's control and this alteration was the sole proximate cause of her injuries.

In her Petition, Langford does not dispute the dismissal of her strict liability and failure to warn claims. Langford's primary argument is that the District Court and Court of Appeals erred as a matter of law in applying the substantial alteration defense to her negligent design claim. Langford argues that the District Court and Court of Appeals overlooked a material fact question concerning whether the miter saw was negligently designed because it was not equipped with an interlocking mechanism which theoretically could have disabled the miter saw if the safety guard was removed. Langford argues that it was foreseeable that someone might subsequently intentionally remove the safety

guard, and therefore, Makita should have designed the saw with additional safeguards to prevent the user from coming into contact with the spinning blade. The District Court and the Court of Appeals considered and correctly rejected this argument because no matter how many different ways Langford attempts to present her claims, she cannot avoid the fact that the saw which injured her is not the saw which Makita manufactured. As the District Court properly observed: "While it may be technologically possible to place an interlock system on a saw, [Langford] has no proof that she would have been hurt absent the modification by her employer." App. at 6a.

Mississippi law is clear that the manufacturer of a product simply cannot be held liable under any theory of recovery if the product which causes injury is substantially different due to a material modification from the product which it manufactured. This is especially true where, as in this case, the product leaves the manufacturer equipped with a safety feature which, but for a subsequent alteration involving its forcible removal, would have prevented the plaintiff's injuries. The substantial alteration defense operates as a complete bar to Langford's claims, including her claim for negligent design, because she cannot prove that her injuries were proximately caused by a defective condition that existed when the miter saw left Makita's control.

Langford's argues in her Petition that the substantial alteration defense does not operate as a complete bar to her negligent design claim.[3] This argument is at odds with

3. Langford insinuates that the lower courts failed to follow Mississippi law as articulated in *Ward v. Hobart Mfg.*, 317 F. Supp. 841, 847-48 (S.D. Miss. 1970). Langford fails to mention that this (Cont'd)

§ 11-1-63 and Mississippi case law. The Mississippi Supreme Court has consistently upheld the dismissal of negligent design claims in products liability actions where the proximate cause of the plaintiff's injuries is an intervening act or omission (such as a substantial alteration of the product) that occurs after the product leaves the manufacturer's control.[4] For example, in *Thomas v. Munson Machinery Co.*, 463 So.2d 1044 (Miss. 1985), the Mississippi Supreme Court clearly indicated that an action for negligence or strict liability will not lie against a manufacturer where the product is not defective at the time it is sold, and an intervening cause is isolated as the sole proximate cause of the plaintiff's injuries. In *Thomas*, the employee of a chemical company sued the manufacturer of a chemical mixing machine for injuries suffered when the mixer accidently started while the employee was performing maintenance on it. The employee asserted causes of action (much like Langford's claims) for negligence and strict liability, alleging that the mixer was defective in that:

> (1) it was not equipped with any fail-safe device which would prevent the mixer from operating when the door was open, (2) it was not equipped

(Cont'd)
case was reversed as clearly erroneous on appeal in favor of the defendant-manufacturer. 450 F.2d 1126 (5th Cir. 1971). Langford also fails to mention that the quoted passage which she relies upon from the *Ward* decision is a summary of a law review article, not Mississippi law.

4. The Mississippi Supreme Court recognizes that the substantial alteration defense is in essence a question of proximate cause. *See Matthews*, at 174-75 (stating "[b]efore a defect in a product can be isolated as the cause [of injury], it must be shown that the product reached the consumer without substantial change in its condition").

> with any device which would shut off the mixer after part of a human body was caught in it . . . , and (3) there was nothing on the mixer warning users that it was in an unreasonably dangerous condition. . . .

463 So. 2d at 1045. The Court held that the manufacturer was not liable under either strict liability or negligent design theories because the mixer, as sold, was not defective and because the employer who purchased the mixer failed to install a disconnect switch as recommended by the manufacturer, which, if installed, would have prevented the accident. *Id.* at 1047 (upholding summary judgment in favor of the manufacturer).

The *Thomas* Court relied primarily on its earlier decision in *State Stove*, 189 So. 2d at 115-16, where the plaintiff's claims were likewise barred because of the intervening negligence of a third party. In that case, homeowners sued the manufacturer of a water heater which exploded and destroyed their home. The manufacturer sold the water heater with clear instructions directed to the installer to place a valve on the heater which, if installed, would have prevented the explosion. However, the third parties who installed the heater failed to install the valve. The Court held that the manufacturer was not liable under strict liability or negligence because (1) the water heater as manufactured was not defective, (2) the water heater was not expected to and did not reach the homeowner without a substantial change in the condition in which it was sold; and (3) the failure of the installers to place the valve on the heater was "an intervening, sole proximate cause of the damages suffered by [the homeowners]." *Id.* at 121-23.

Contrary to Langford's arguments, the decisions of the lower courts are fully in accordance with Mississippi law. The District Court and Court of Appeals correctly dismissed Langford's claims, including her claim for negligent design, because her injuries were proximately caused by a substantial alteration to the miter saw which occurred after it left Makita's control.

Langford's negligent design theory is also at-odds with the legal duty required of manufacturers. It is undisputed that Makita designed and produced the LS1020 miter saw with a safety guard which, if not subsequently removed, would have prevented Langford's injuries. Langford presented no evidence that the safety guard was itself defective or not sufficiently durable for ordinary use. In fact, the only record evidence is that the safety guard was intentionally broken off or forcibly removed by someone at Belmont Homes.

As a matter of law, Makita met its obligation to manufacture a reasonably safe product. *See Hall v. Mississippi Chemical Express, Inc.*, 528 So. 2d 796, 800 (Miss. 1988) (Mississippi law requires that products be "reasonably fit, not perfectly so"). Makita is not an insurer of its miter saws. *State Stove*, 189 So. 2d at 120; *Ward v. Hobart Mfg.*, 450 F.2d 1176, 1187 n.39 (5th Cir. (Miss.) 1971). Under Mississippi law, Makita was not required to design a fool-proof miter saw or to incorporate two safety features (a guard and an interlocking device) to protect against the same danger. *See Cooper v. General Motors Corp.*, 702 So. 2d 428, 443 (Miss. 1997) (a manufacturer owes no duty "to place two safety devices in a [product] to protect against essentially the same danger"); *Prestage*, 617 So. 2d at 256 (a manufacturer owes no duty to create a

completely safe product). Nor was Makita required to design and produce a miter saw with safety features which could not be defeated by subsequent modifications. *See Hall*, 528 So. 2d at 800 (the law does not impose a duty upon a manufacturer to design an accident proof or fool-proof product; nor does it require a manufacturer "to incorporate into his product every innovation which . . . might have rendered the product more safe"). The removal of the safety guard by Belmont Homes, no matter how foreseeable, is beyond the scope of Makita's legal responsibility.

As an aside, Langford argues that the District Court and Court of Appeals missed a genuine issue of material fact as to whether the safety guard was missing from the saw due to normal "wear and tear" or whether it was intentionally broken off or forcibly removed by someone at Belmont Homes. Langford states in her Petition that she presented "substantial evidence that the missing blade guard was due to wear and tear." (Pet. at 13). This statement is incorrect.[5] The only proof in the record is that the safety guard of the miter saw was intentionally broken off or forcibly removed by someone at

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5. Langford also mis-characterizes *Prestage*, 617 So. 2d at 262, as holding that the substantial alteration defense does not apply where the alteration of a product may be due to normal "wear and tear" associated with usage. *Prestage* does not stand for this proposition. In *Prestage*, the defendant-manufacturer argued that its grain auger had been substantially altered after it left its control. In upholding the denial of defendant's motion for directed verdict on this point, the Court noted that this argument was inconsistent with the testimony of the defendant's own expert who testified that other than normal "wear and tear" he found nothing significantly different about the condition of the auger from its condition when it was manufactured. In light of this testimony, the defendant could hardly claim that the auger was substantially altered after it left its control. This is certainly not the situation in the instant case.

Belmont Homes. The record is devoid of any competent evidence that the safety guard of the miter saw was itself defectively designed, that it was not sufficiently durable for ordinary use, that it was easily removable or that it showed any sign of normal wear and tear.

In any event, regardless of how or why the safety guard came to be missing, the miter saw was being used at Belmont Homes in violation of the manufacturer's warnings. Belmont Homes was responsible for maintaining equipment being used in its workplace in a safe working condition. Belmont Home's failure to replace the missing safety guard or to remove the miter saw from the workplace relieves Makita of any liability. *See Hardy v. Chemetron Corp.*, 870 F.2d 1007, 1008 (5th Cir. (Miss) 1989) (where unsafe condition of machine develops because of employer's poor maintenance, the manufacturer is not liable). The District Court correctly recognized this, noting that the guard "had either been bypassed by [Belmont Homes] or . . . not been timely repaired." App. at 6a.

B. The District Court and Court of Appeals Correctly Ruled that Langford Assumed the Risk of Using the Miter Saw Without a Safety Guard and that under Mississippi Law this Barred Her Claims

The assumption of risk defense is a complete bar to recovery according to Mississippi's Product Liability Act. Section 11-1-63(d) provides in this regard:

> In any action alleging that a product is defective pursuant to paragraph (a) of this section, the manufacturer or seller shall not be liable if the claimant (i) had knowledge of a condition of

> the product that was inconsistent with his safety; (ii) appreciated the danger in the condition; and (iii) deliberately and voluntarily chose to expose himself to the danger in such a manner to register assent on the continuance of the dangerous condition.

Miss. Code Ann. § 11-1-63(d); *see Materials Trans. Co. v. Newman*, 656 So. 2d 1199, 1203 n.1 (Miss. 1995) (noting that § 11-1-63 re-establishes assumption of the risk as a complete defense in products liability actions).

Based on the summary judgment record, the following facts are undisputed: Langford knew that the miter saw was supposed to have a safety guard covering the blade. She also knew that Belmont Homes had removed the safety guard from this saw and other saws in the plant. Langord knew it was unsafe to operate a miter saw without the safety guard in place because she appreciated the danger of coming into contact with a spinning saw blade. Langford even complained about the missing safety guards to her supervisor at the plant. Yet, in spite of her appreciation of this danger, Langford continued to use the miter saw in its altered condition without the safety guard because she feared her employment with Belmont Homes would be terminated if she refused. As the District Court correctly found: "[Langford] knew of the danger of using the saw without the guard, advised her supervisor that someone could get hurt, and yet, continued to use the saw. Assumption of the risk in this context is recognized by the law of Mississippi and acts as a bar to recovery by [Langford] against [Makita]." App. at 6a-7a.

In her Petition, Langford makes the same arguments concerning assumption of the risk that were considered and

rejected by the courts below. Langford first argues that the lower courts should have limited Makita to comparative negligence principles and not allowed it to advance an assumption of the risk defense on summary judgment. This argument is without merit. As set forth above, assumption of the risk is a complete defense under § 11-1-63.[6] Since the summary judgment record reveals no genuine issue of material fact as to whether Langford assumed the risk of injury, this defense operates as a complete bar to recovery.[7]

Langford's other argument is that the lower courts should not have allowed Makita to assert assumption of the risk as a defense at all because it did not "admit" the existence of a risk. This argument is without merit. Langford cites *Wilks v. American Tobacco Co.*, 680 So. 2d 839, 843 (Miss. 1996), for the proposition that a manufacturer cannot assert assumption of the risk as a defense unless it admits that its

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6. In her Petition, Langford cites *Donald v. Triple S Well Svc., Inc.*, 708 So. 2d 1318, 1325 (Miss. 1998) and *Churchill v. Pearl River Basin Development Dist.*, __ So.2d __, No. 96-CA-01384-SCT (§12) (Miss. May 27, 1999), for the proposition that assumption of the risk is not a complete defense but is instead subsumed within Mississippi's rule of comparative negligence. Langford fails to point out that neither case involves § 11-1-63. Moreover, plaintiff fails to cite *Newman*, 656 So. 2d at 1203 n.1, wherein the Mississippi Supreme Court clearly stated that § 11-1-63 re-establishes assumption of the risk as a complete defense in products liability actions.

7. The District Court and Court of Appeals correctly rejected Langford's contention that she did not "voluntarily" expose herself to the danger of using the miter saw without a guard because she felt compelled to operate the saw or risk losing her job with Belmont Homes. *See* App. at 7a (citing *Hedgepeth v. Fruehauf Corp.*, 634 F. Supp. 93 (S.D. Miss 1986), *aff'd*, 813 F.2d 405 (5th Cir. 1987)).

product poses a risk. However, *Wilks* involved a lawsuit against a cigarette manufacturer. The manufacturer "firmly denied that smoking was hazardous" and thus was not permitted to assert assumption of the risk as a defense. Langford's reliance on *Wilks* in this context is misplaced. Makita denies that its miter saw was defective and unreasonably dangerous because it was designed and equipped with a safety guard which, if in place, would have prevented Langford's injuries. However, unlike the cigarette manufacturer in *Wilks*, Makita has never taken the position in this litigation that its miter saw poses no hazard at all. Such a position would fly in the face of common sense because everyone knows that electric saws with spinning blades are dangerous. This is exactly why Makita equipped its miter saw with a safety guard.

The only conclusion which can be drawn from the undisputed facts of this case is that Langford assumed the risk of using the miter saw without a safety guard in the course of her employment with Belmont Homes. The District Court and Court of Appeals properly dismissed Langford's claims on this alternative basis.

II. THE PETITION DOES NOT PRESENT ANY IMPORTANT QUESTION

The District Court applied Mississippi law to the undisputed facts in this case and properly dismissed Langford's claims under Fed. R. Civ. P. 56. This ruling received the concurrence of the Court of Appeals. While Langford expresses her disagreement with these decisions, her Petition simply does not present a novel or important question of great public interest which requires resolution by this Court. The decisions below turn solely upon a

straightforward application of Mississippi law to the particular facts involved in this case. This Court is not a forum for correction of errors, and it does not "undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional show of error." *Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271, 275 (1949). Langford has failed to make such a showing.

CONCLUSION

For all the foregoing reasons, the Petition should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DATED AND FILED MAY 13, 1999

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 98-60764
Summary Calendar

LINDA DARLENE LANGFORD,

Plaintiff-Appellant,

VERSUS

MAKITA CORPORATION OF AMERICA; ET AL,

Defendants,

MAKITA U.S.A., INC., and MAKITA CORPORATION,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Mississippi
(1:97-CV-139-JAD)

Before DAVIS, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Appendix A

Plaintiff-Appellant Linda Langford was injured while operating a Makita 10" Miter Saw, Model LS1020, at her workplace, Belmont Homes, Inc., in Belmont, Mississippi. She sued Defendants-Appellants Makita Corporation, *et al.*, ("Makita") for damages, alleging strict liability for the product design, negligent design, negligent testing, negligent manufacturing, and failure to warn.

The district court granted Makita's motion for summary judgment because: (1) the saw had been substantially altered after it had left Makita's control, and this substantial alteration was the cause of Langford's injuries; and (2) Langford was aware of the danger the altered saw presented and nevertheless continued to use it.

All of Langford's claims are governed by Section 11-1-63 of the Mississippi Code. Under Section 11-1-63, a product manufacturer has no liability unless the plaintiff proves that the product was defective at the time it left the manufacturer's control. In addition, Section 11-1-63 provides that the manufacturer shall not be liable if the plaintiff was aware of the defective condition and voluntarily continued to use the product.

After reviewing the record, we conclude that the district court correctly determined that no reasonable juror could have reached any conclusion except that the saw was substantially altered and that Langford voluntarily assumed the risk of using it in a defective condition. Under these circumstances, Langford could not have prevailed on any of her claims. The judgment of the district court is therefore

AFFIRMED.